1456.

SUPREME COURT OF THE UNITED STATES.

No. 126.

LESSEE OF HENRY WALLER, ASSIGNEE OF THE BANKRUPT ESTATE OF FRANCIS A. SAVAGE, PLAINTIFF,

vs.

JAMES AND JOSEPH BEST.

ON A CERTIFICATE OF DIVISION FROM THE CIRCUIT COURT U. S. FOR THE DISTRICT OF KENTUCKY.

UNITED STATES OF AMERICA,
Eighth circuit, Kentucky district, sct:

JOHN DOE, on the demise of Henry Waller, Assignee of the bankrupt estate of Francis A. Savage, Plaintiff,
against
JAMES BEST AND JOSEPH BEST, Defendants.

In ejectment.
Nov. Term, 1843.

The following statement of questions and points of law which arose in this case, and the adjournment thereof into the Supreme Court of the United States for decision, was ordered to be entered, to wit:

Savage had the title to the land; the plaintiff claimed under the decree of his bankruptcy; the defendant, under a sheriff's sale under an execution.

The act of bankruptcy of Savage was committed on the 27th April, 1842; the petition of his creditors was filed against him in the district court on the 25th day of June, 1842, and he was declared a bankrupt on the 26th October, 1842; the plaintiff was appointed the assignee, and this is his title.

An execution of fieri facias on a judgment against the estate of Savage was delivered to the sheriff on the 9th April, 1842, before the act of bankruptcy, and was levied on the land on the day of before the petition; but after the act of bankruptcy the defendant purchased at the sheriff's sale, had his deed, and this was his title.

The question was—has the plaintiff, by the decree of bankruptcy and its relation back to the act of bankruptcy, the elder and better title; or has the defendant, by the prior delivery of the execution into the hands of the sheriff, and his levy of it, before the petition was filed, the prior and superior title?

J & G. S. GIDEON, printers.